(2) in this case the contributory cause of the stroke suffered by the plaintiff was furnished by and in the course of the plaintiff's employment and therefore the appellant was entitled to a compensation under the Workmen's Compensation Ordinance and it was within the competence of the court to make an award under section 41 (2) of that Ordinance.

Cases referred to:-

(1) *Harrison* v. *Wythemoor Colliery Co. Ltd.* [1922] 2 K.B. 674, 686.

(2) *Golden Hope Rubber Estate Ltd.* v. *Muniammah & Ors.* [1965] 1 M.L.J. 5.

(3) *Ormond* v. *C.D. Holmes & Co. Ltd.* [1937] 2 All E.R. 795, 801.

(4) *Darling Island Stevedoring & Lighterage Co. Ltd.* v. *Hankinson* (1967), 117 C.L.R. 19, 34; 40 A.L.J.R. 544; [1967] A.L.R. 545.

(5) *Tan Chye Choo* v. *Chong Kew Moi* [1966] 2 M.L.J. 4; [1970] 1 M.L.J. 1, P.C.

FEDERAL COURT.

Atma Singh Gill for the appellant.

N. A. Marjoribanks for the respondents.

Cur. Adv. Vult.

Gill F.J.: The plaintiff-appellant in this case was employed as a bus conductor by the defendants-respondents from 1st April, 1947. At all material times his wages were $8 per day, and his usual hours of work were from 6.30 a.m. to 6 p.m. His duties, apart from selling tickets to passengers, keeping and maintaining records of tickets sold and accounting for the fares collected, were to look after the safety of passengers when boarding or alighting from the bus and to load on to the roof of the bus and unload therefrom passengers' luggage, vegetable baskets and bicycles, etc.

On 10th April 1965 the plaintiff reported for work at Bahau at 8.30 a.m. The bus on which he worked made a trip from Bahau to Seremban. On its return from Seremban it stopped at Kuala Pilah where the plaintiff had to unload some luggage. After it had proceeded towards Bahau and travelled about four miles from Kuala Pilah the plaintiff felt giddy. A little while later the bus stopped to let down some passengers, and the plaintiff had to unload some bags from the bus. At this stage he vomitted but remained seated in the bus. After the bus had moved and gone for a short distance he had a stroke as a result of which he suffered paralysis of the left half of his body.

On 15th June 1967 the plaintiff issued against the defendants a writ which was indorsed with a claim for "damages for personal injuries sustained on 10.4.65 while the plaintiff was employed as a bus conductor and caused by the negligence and breach of statutory duty of the defendants, their servants or agents". On his claim being dismissed by a judgment of Abdul Hamid J. dated 29th January 1969, the plaintiff commenced this appeal from that judgment. Because of his death shortly before the appeal first came up for hearing, it has been prosecuted by his widow Gan Poh.

The basis of the plaintiff's claim for damages on the ground of breach of statutory duty was that he was required to work for more than six days and for more than 48 hours in a week in contravention of sections 58 and 59 respectively of the Employment Ordinance No. 38 of 1955, it being clear that he was a labourer within the meaning of section 2 of the Ordinance read in conjunction with paragraph 2 of the First Schedule thereto.

The defendants by their defence pleaded that the plaintiff was required to undertake two round-trips per day from Bahau to Seremban, that regular rest periods were provided during the trips and that this arrangement had the full cognizance and consent of the Labour Department. They further pleaded that they did not insist on the plaintiff working more than six days in a week, and that on a prior application being made he was allowed to take a day's holiday at times convenient or suitable.

Admittedly, the plaintiff worked for more than six days and 48 hours in a week, but he received payment for working overtime, and he took unpaid leave off and on. As he was paid by the day, it was obviously to his advantage to work as many days in the month as he liked. Counsel for the defendants submitted that there was no breach of any statutory duty on the part of the defendants, as sections 58 and 59 of the Employment Ordinance did not prohibit a labourer from working more than six days or more than 48 hours a week. It is reasonable to assume that working for more than the number of days or hours in a week, as stipulated in the Ordinance, was entirely a voluntary act on the part of the plaintiff. In the circumstances, the learned trial judge was quite right in coming to the conclusion that there was no breach of statutory duty on the part of the employer. His reason for coming to that conclusion, with which I entirely agree, are stated in his judgment as follows: -

"In my view an employer owes no duty to prohibit a labourer if he so elects to work more than six days in a week. It seems to me that section 59(1) of the Employment Ordinance also places no absolute limitation on the part of the labourer to work more than 48 hours in a week and there appears to be no prohibition against an employer to employ a labourer who voluntarily elects to work more than 48 hours a week.

The plaintiff's claim for damages on the ground of negligence at common law was founded on the allegations that both on 9th April and 10th April, 1965 he was obliged to work when he was feeling ill, because his application for leave was refused on the ground that there was no relief conductor available. To put it in other words, his allegation was that he had to work under stress by reason of the defendant's negligence in refusing his application for sick leave, and that it was this stress which brought about the stroke. The defendants by their defence denied the allegations in the plaintiff's statement of claim that the plaintiff applied for leave either on 9th April or 10th April and that there were no relief conductors available.

The plaintiff's evidence in court was that he asked for leave from one Mr. Lee on 9th April, 1965 at about 11 a.m. after he had already started working, but that he did not ask for leave on 10th April, as he was told in the morning that there was no relief conductor available. The evidence of Mr. Lee Khong Boo (D.W. 2) was that the plaintiff did not complain to him on 9th April, 1965 that he had giddiness or headache or was feeling unwell and did not ask for leave, nor did he ask for leave on 10th April, 1965. The judge's

by his agreement. He may, however, terminate the existing tenancy by notice and offer the tenant a new tenancy at an increased rent. And if the tenant accepts then he is bound to pay the new rent which he has agreed to pay.

If the original tenancy was created orally, as it was in this case, the notice to terminate it may be generally given orally (see *Bird v. Defonvialle*(2))."

There, as well as in the instant case, it was entirely a question of fact whether or not a new monthly tenancy at the higher rent came to be substituted for the old. Reading the judgment as we do, it seems to us quite clear that the judge construed sub-section (2) with the strictness only permissible of penal statutes. In our view statutory limitations on the exercise of his common law rights by the landlord are encroachments on rights only justifiable in the public interest. There is no justification for extending the application of any provision in the Rent Control Ordinance beyond limits necessary in order to achieve the object and purpose of the Ordinance.

In our view sub-section (2) of section 8 has made no change whatsoever in the common law. It is merely a restatement of principle considered by the legal draftsman to be expedient in case it should erroneously be considered that sub-section (1) entitles a landlord, merely on demand, to collect the permitted increase against the will of the tenant. What sub-section (2) means is that the increased rent is exigible only with the tenant's consent. This plainly is so because the landlord is given an appropriate remedy against the recalcitrant tenant by virtue of paragraph (c) of sub-section (1) of section 15, namely, that the restriction on a landlord's right to repossession is removed:—

"(c) where the landlord, as a step towards increasing the rent in pursuance of the provisions of section 8, has given the tenant a notice to quit and the tenant holds over possession at the expiration of such notice without paying or agreeing to pay the increased rent."

Where, however, the tenant consents, upon receipt of notice, oral or written, of the landlord's intention to raise the rent and, pursuant thereto, pays the increased rent, it is, of course, elementary law that a new tenancy at the higher rent replaces the old thereafter. The old tenancy having been thus determined by mutual agreement, an express notice to quit is wholly supererogatory and sub-section (2) cannot be interpreted as further requiring, nevertheless, an exercise in futility. No magic formula or incantation is necessary to the creation of a valid parole tenancy.

In the instant case notice of demand for increased rent was given in writing in every instance, to which the tenant raised no objection. As the respondent admitted in evidence:—

"I thought if landlord could increase, it must be lawful increase, therefore I paid. Nothing in writing. I agree I was happy to pay until possession sought by landlord . . . I paid increase in accordance with notice."

This admission is clear proof of consent. Sub-section (2) of section 8, therefore, had no application.

We turn now to the relevant provisions authorising increase of rent. Section 4(1) provides:—

"4.—(1) *Save as hereinafter in this Ordinance provided*, it shall be unlawful for any landlord to increase, or attempt to increase, or to receive or recover, a rent in respect of any tenancy of premises in excess of the rent fixed by an order of the board or, if no order has been made, in excess of the standard rent."

The next relevant provision is in sub-section (4):—

"(4) A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

It may be mentioned, at this stage, that $45 being the proven standard rent, paragraphs (c) and (d) of section 8(1) permitted increases as follows:—

"(c) where the premises were let on or before the 15th day of April, 1946, and there has been no increase of rent subsequent to that date, to the extent set out in the third column of the Second Schedule in respect of the types of premises and the standard rents thereof set out adjacent thereto in the first and second columns of that Schedule;

(d) where the current rent is less than the annual value on which the premises are assessed under the Kuching Municipal Ordinance or the Local Authority Ordinance, to the extent of twenty-five per cent of the difference between the current year and such annual value."

The rent had been raised by the appellant's predecessor to $58.25 pursuant to paragraph (c). The appellant himself further raised the rent as follows:—

From June 1, 1960	to February 28, 1961 ..	$103.32
From March 1, 1961	to January 31, 1962 ..	$110.00
From February 1, 1962	to December 31, 1966 ..	$115.00

These increases purported to have been made as authorised by paragraph (d). Evidence was given of the annual value of the premises, thus:—

1957 to 1958	$1,200.00	or	$100.00 p.m.
1959 to 1962	$1,560.00	or	$130.00 p.m.
1963 to 1965	$1,380.00	or	$115.00 p.m.
1966 et seq.	$4,900.00	or	$408.33 p.m.

Before proceeding with the arithmetical exercises, we think much labour will be saved by paying heed to the plea of limitation raised in the defence. Item 43 of the Limitation Ordinance (Cap. 49) reads:—

"For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use,"

and the limitation period is 3 years. This item — with all respect to the learned judge who held other views — belongs to the well-known category of "money had and received by A to the use of B", which we think is clearly applicable. Consequently, the respondent's claim must be restricted to the term of 3 years next preceding the issue of the writ on March 29, 1967 — his claim for the period before March 29, 1964 being time-barred. He is, therefore, entitled only to overpayments made on rents accrued between April 1, 1964 and December 1966 — or 33 months in all.

Prior to the first increase on June 1, 1960, the lawful rent was $58.25. In 1960 the annual value — which prevailed from 1959 to 1962 — was $1,560 or $130 p.m. Following the formula stated in paragraph (d) the difference between $130 and the monthly rent of $58.25 is $71.75, of which 25 per cent is $17.93. Accordingly, the increase was lawful only to the extent of $58.25, plus $17.93, or a total sum of $76.18.

Thus, from June 1, 1960 onwards, clearly the appellant had been overpaid. It is needless, however to calculate what the total was prior to April 1, 1964, since the claim is barred by limitation. But after April 1, 1964 the recovery of overpayments is not so barred. The appellant was collecting $115 p.m., making a total of $3,795 for 33 months. As the calculation in the last preceding paragraph shows, the last "current rent" was valid only to the extent of $76.18 per month, based on the 1960 current value. We do not think, however, that any drop in the annual value in 1962 — 1965 automatically invalidated the pre-existing rate of lawful rent, which was $76.18. Just as a landlord would have to take steps to raise the rent upon an increase in annual value, so also should a tenant if he desired to avail himself of a drop in such value. Here, the respondent, being the tenant, had let opportunity pass. At the monthly rate of $76.18 over a period of 33 months, the respondent need only have paid a total sum of $2,513.94. But having in fact paid $3,795, he should be refunded the difference of $1,281.06 — provided there are no other relevant factors to be considered.

There remains, however, the fact that the annual value for 1966 had been raised to $4,900 or $408.33 per month. Using again the formula in paragraph (l), the difference between $408.33 and the current rent — *but only to the extent of the last valid rate of $76.18* — amounts to $332.15, of which 25% would be $83.04. This means that the appellant could have charged $76.18 plus $83.04, or a total of $159.22. That sum would then have been *lawful* rent. Of course he could make no *claim* at that rate since he had not taken any steps to raise the rent. Strangely enough, however, his inability to make an affirmative claim could give no corresponding benefit to the respondent. We repeat again the provisions of section 4(4) which reads:—

> "A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

It is to be observed that the respondent's claim to a refund entitles him only to the excess over *what may lawfully be received* by the landlord. Hence, in respect of the 12 months of 1966 the respondent was never overpaid, as he collected only $115 against a lawfully recoverable rent of $159.22. Accordingly, the overpayments for which the respondent is entitled to a refund cover only a period of 21 rather than 33 months, amounting to $815.22.

We accordingly allow the appeal, and set aside the judgment of the court below. Instead, judgment will be entered for the respondent in the sum of $815.22. As to costs, the appellant had paid into court the sum of $1,000. He will consequently be entitled to costs after the date of such payment in and the respondent to his costs up to such date.

The appellant will have also the costs of this appeal, on the lower scale for the High Court.

Appeal allowed.

HOO YAN MENG v. ESAH

[A.C.J. (Winslow J.) October 8, 1969]

[Singapore — District Court Appeal No. 5 of 1969]

Landlord and Tenant — Recovery of possession — Domestic premises — Statutory tenant — Death of — Whether tenancy devolves to member of family — Control of Rent Ordinance (Cap. 242), s. 16(c).

The sole question for decision in this case was whether a member of a deceased statutory tenant's family was protected under section 16(c) of the Control of Rent Ordinance.

Held: a member of the family of a deceased tenant whether contractual or statutory enjoys protection under section 16(c) of the said Ordinance but does not by virtue of this protection acquire any kind of tenancy. The Ordinance compels the landlord to recognise a right on the part of such person to quiet enjoyment. His position is stronger than that of a licensee, he may be described as a "compulsory quasi-tenant."

Cases referred to:—

(1) *Khadijah binte Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90.

(2) *Foo Kok Hui* v. *Saraswathy & Anor.* [1961] M.L.J. 91.

(3) *Indo Australian Trading Co. Ltd.* v. *Lim Hoon & Anor.* [1961] M.L.J. 259.

(4) *B.T. Hassan* v. *G.A. Scully* [1951] M.L.J. 141.